

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

DIVISION I

KEITH WENZEL, Director, Department of
Insurance, State of Missouri,

Plaintiff,

V.

Case No. CV 99 323050

GENERAL AMERICAN MUTUAL
HOLDING COMPANY, a Missouri
Mutual Holding Company,

Defendant.

**JUDGMENT ESTABLISHING ELIGIBILITY DATE,
CALCULATION DATE AND CERTAIN OTHER MATTERS
WITH RESPECT TO THE PLAN OF REORGANIZATION**

This Court held a hearing on November 16, 2000 (the “Hearing”) to consider the “Rehabilitator’s Application For Order Fixing Bar Date for Claims, Approving Eligibility Rules And Procedures And Approving The Form And Manner Of Notice Of This Motion And For Orders Concerning Certain Related Issues” (the “Application”). By its “Order (1) Fixing a Bar Date; (2) Fixing a Hearing Date on Certain Matters and (3) Approving Notice of the Hearing entered September 22, 2000 (the “September 22 Order”), the Court determined to fix January 31, 2001 as the bar date in this case (the “Bar Date”), set the Hearing to consider the remaining issues raised by the Application as described below, and approved a form of notice to be sent to policyholders and certain other interested parties to advise them both of the Bar Date and of the Hearing.

Eric A. Martin, Esq. from the Missouri Department of Insurance appeared for Keith A. Wenzel, Director of the Department of Insurance and Rehabilitator. Albert A. Riederer, Esq., the Special Deputy Rehabilitator, appeared for himself and through his counsel, Richard G. Clemens, Esq. and Thomas E. Patterson, Esq. of Sidley & Austin. Other appearances are as noted in the record of these proceedings.

By means of the Application, the Special Deputy Receiver seeks an order with respect to the following four matters to implement the approved Plan of Reorganization in this proceeding, each of which concerns the means by which the funds held by the estate will be allocated among the members of General American Mutual Holding Company (“GAMHC”): (i) to fix an Eligibility Date—that is, the date as of which a member must have held an in-force policy in order to be eligible to receive a portion of the estate’s funds; (ii) to fix a Calculation Date—that is, the date as of which the value of the membership interests will be calculated; (iii) to determine the definition of Eligible Policies—that is, what criteria a policy must satisfy in order for the member who held such policy to qualify for a share in the distribution from the estate; (iv) to determine the general methodology and principles to be used in determining the allocation of the estate’s funds, including whether there will be a fixed share allocated to each qualified member irrespective of the value of the member’s policy and, if so, the percentage of the estate’s funds to be allocated to such fixed shares and the basis on which it will be allocated to members.

The Special Deputy Receiver represents that determination of these issues is necessary in order to be able to formulate the Membership Schedule as required in the Plan of Reorganization previously approved by this Court. The Court was advised that the actuarial expense in formulating the Membership Schedule is estimated to be \$3 million; without a

determination of these issues, any Membership Schedule would be subject to challenge and any successful challenge made on the basis of these five issues could result in much of the work done being required to be done over, at great expense and delay. Accordingly, it is necessary and appropriate to resolve the foregoing issues as a threshold matter to permit the efficient and timely preparation of the Membership Schedule.

In addition, the Application seeks approval of a proof of claim form and a form of notice to be published advising the public of the Bar Date.

The Court received eight comments and objections to the Application, which are listed and summarized in the “Report of SDR on Comments and Objections” filed by the Special Deputy Receiver. In addition, the Court received various additional comments during the Hearing, which are summarized below.

Based on the Application, the testimony at the Hearing provided by Kenneth Beck, a consulting actuary retained by the Special Deputy Receiver, as well as the representations and arguments from the Special Deputy Receiver and others during the course of the Hearing, and pursuant to Mo. Rev. Stat. §375.1168.4, the Court hereby finds and concludes as follows:

A. Notice of the Hearing was provided in accordance with the September 22, 2000 Order and was sufficient under the circumstances of the case.

B. Eligibility Date. The Court has considered the comments and objections of policyholders concerning the eligibility date. Three objectors, Anthony D. Flore, Elizabeth Behrend and Kenneth W. Behrend, appeared by counsel Ed Cochran and Mark Warren, and proposed an eligibility date of January 1, 1994, three years prior to the formation of GAMHC. Melissa Crockett proposed an eligibility date of December 31, 1998. The testimony, arguments

and representations presented at the Hearing demonstrated that the selection of an earlier eligibility date presents a number of legal and practical difficulties including the following:

(i) Making distributions based on former membership status appears inconsistent with the Articles of Incorporation of General American Mutual Holding Company. Those Articles provide that members lose their participation rights when they cease to be members. While the Articles are not binding in a rehabilitation proceeding, they are persuasive authority for the members' expectations. Moreover, in this case, policyholders who provided notice that they intended to terminate their policies after January 28, 1999 were informed that such a termination could result in loss of certain membership benefits. Accordingly, at least as to those members, they were on notice that their termination could result in the loss of their membership benefits.

(ii) Making distributions to former policyholders has rarely been done in the demutualization of life insurance companies, and then only when required by a specific state law which sets forth the exact prior period for eligibility. While the Court is not bound in this rehabilitation proceeding by the rules applicable to demutualizations, the sale to Metropolitan Life Insurance Company under the Plan of Reorganization in this case shares some similarities to a demutualization. Accordingly, the practice in demutualizations is of instructive value.

(iii) As to the selection of an earlier date, the court is unable to determine a logical basis for picking any particular earlier date. The fact that two objectors proposed radically different alternative eligibility dates illustrates the difficulties associated with picking an eligibility date different than January 5, 2000.

C. Based on the foregoing, the Court finds and determines that the Eligibility Date of January 5, 2000 is a fair and equitable.

D. Calculation Date. No specific objection was made to the calculation date. The Court finds and determines that the Calculation Date of December 31, 1999 is fair and equitable.

E. Eligible Policies. No specific objection was made to the relief sought in paragraphs 21 through 26 of the Application, which describe the principles and methods for determining Eligible Policies. However, comments were received from two sources that concerned policies that, at one time were participating policies but were then exchanged for non-participating policies.

F. Ben H. Wolzenski, Executive Vice President of General American Life Insurance Company submitted a comment relating to up to twenty-five policyholders who received non-participating policies. In some cases, the non-participating policies were received in exchange for participating policies. He proposed that such policyholders be treated as eligible for variable shares in the distribution.

G. Burlington Northern Santa Fe Corporation appeared by counsel Robert Sullivan and Douglas Laird represented that they own certain policies which, at one time, were participating, but that had been exchanged for nonparticipating policies.

H. The Special Deputy Receiver states he has not had an opportunity to fully investigate the circumstances described by Wolzenski and Burlington Northern and has recommended that this Order, and the approval of the methods for determining Eligible Policies, be without prejudice to Burlington Northern Santa Fe Corporation and the holders of the policies

described by Wolzenski to contend that their policies are entitled to variable shares in the distribution.

I. Accordingly, the Court finds and determines that the methods and principles for determining Eligible Policies as set forth in paragraphs 21 through 26 of the application are fair and equitable, provided, however, (i) that this Order shall not constitute a determination as to whether the policies described by Burlington Northern and Wolzenski are entitled to variable shares in the distribution; (ii) that, if the Special Deputy Receiver determines that such policies should not be entitled to variable shares in the distribution, then the holders of policies acquired under similar circumstances will be given notice of that determination and an opportunity to be heard by this Court; and (iii) in the event that one or more of the holders of such policies request a hearing, then this Court will review whether the Special Deputy Receiver's determination is fair and equitable.

J. General Methodology and Principles for Determining the Allocation of Consideration. The Court received no objection to the general method proposed by the Special Deputy Receiver, the so-called "historical plus" method and other matters as set forth in the Application. The Court did receive various written comments with respect to particular issues in the application of that method (such as that by the Retirement Plan and Trust of Fennemore Craig), but determines that such issues are premature.

K. Accordingly, the Court finds and determines that the general methodology and principles for allocating value among the holders of Eligible Policies are fair and equitable.

L. Determination, Amount and Allocation of Fixed Shares. The Special Deputy Receiver proposed that 16% of the estate's assets distributable to members be allocated

to a fixed share to be accorded to all members who hold Eligible Policies, and that a single fixed share be given to each member, irrespective of the number of policies held by such member.

M. Anthony Flore, Elizabeth Behrend and Kenneth Behrend have objected that the fixed compensation amount should recognize multiple policy ownership. They also contended that the allocation of 16% of the total consideration to the fixed component appeared arbitrary. Testimony was presented at the hearing by Kenneth Beck, a consulting actuary for PricewaterhouseCoopers, (i) that allocating a fixed component on a membership basis was customary in demutualizations of life insurance companies, (ii) that the range of consideration allotted to the fixed component in life insurance demutualization was 12-23% and that 16% represented an approximate average of the consideration allocated to the fixed component in life insurance company demutualizations, and (iii) allocating a single fixed share to each member irrespective of the number of policies held was proper in this case because, under the Articles of Incorporation for GAMHC, each member was accorded only one vote, irrespective of the number of policies held by such member.

N. One commentator, Buck Consultants, on behalf of Phillips Petroleum, requested additional detailed information concerning the distribution. The testimony presented at the hearing demonstrated that the request for such information was premature at this time.

O. The Court recognizes that, in a demutualization, the fixed share payment is in exchange for the relinquishment of the member's voting rights, and in a demutualization, members must vote on approval of the plan of demutualization. Accordingly, the mutual insurer proposing the plan must provide an incentive for members to vote in favor of the plan, especially to members who would receive only a fixed share. However, in this rehabilitation proceeding, although it is similar to a demutualization in many respects, members are not required to vote.

Accordingly, the Court is not bound by the voting requirements of the Articles of Incorporation in this regard. For the same reason, it is not necessary to follow the range of 10-23%, which is the normal range of total compensation paid through fixed shares in life demutualizations over the past 12-15 years in the United States. On the other hand, voting rights are important in mutual holding companies, and voting rights both existed here prior to the rehabilitation and were eliminated by the sale to Metropolitan Life Insurance Company. Moreover, the testimony showed that elimination of the fixed component would result in some members receiving no distribution.

P. For the foregoing reasons, the Court finds and concludes that a fixed share allocated to each member with an Eligible policy (irrespective of the number of Eligible Policies held by such member) is fair and equitable. The Court, however, determines that it would be fair and equitable to allocate 5% of the consideration distributed to members to fixed shares, not 16% as proposed.

Q. Other Objections. Objectors Anthony D. Flore, Elizabeth Behrend and Kenneth Behrend had, in their written objection, asked that the indemnification of MetLife by the GAMHC liquidation estate be declared null and void, that the objectors be allowed discovery of General American Life Insurance Company's fair market value on a going concern basis and that MetLife be required to fund the GAMHC liquidation estate for any deficiency and that MetLife be granted leave to seek full indemnification, jointly and severally, from the past officers and directors of General American Life Insurance Company. MetLife filed a written objection to this relief, pointing out that the Plan of Reorganization dated as of September 17, 1999, which contained the indemnification provisions, was approved by this Court in a judgment dated November 10, 1999 after notice to all policyholders and a hearing. At the Hearing, the

objectors withdrew these objections and requests; therefore, it is not necessary for the Court to further address these issues.

R. Other Comments. At the Hearing, the Court heard from two agents of General American Life Insurance Company, Ron Hollis and Mike Ruben. These agents commented that they believed that more information should be provided to members regarding the investment of the estate's assets, the estate's income and expenses, the rate of return being achieved by the estate and the timing of distributions.

S. Based on these comments, the Court requests that the Special Deputy Receiver develop additional means to disseminate information on these topics to the public including, if practicable, through the web site operated by the Missouri Department of Insurance for GAMHC members.

The Court having heard the evidence presented at the hearing and the written objections and comments, ORDERS, ADJUDGES and DECREES as follows:

1. The Eligibility Date of January 5, 2000 is hereby approved.
2. The Calculation Date of December 31, 1999 is hereby approved.
3. The definition of Eligible Policies and the criteria for identifying policies entitled to fixed and variable shares in the distribution are approved, except as set forth in the proviso contained in paragraph I hereof.
4. The general methodology and principles for determining the allocation of consideration to each eligible member, regardless of the number of policies owned, is approved.
5. The amount of the fixed share consideration shall be 5% of the total amount available for distribution to members at the time the fixed component is paid (subject to adjustment to a higher or lower fixed dollar amount for rounding and administrative

convenience, as may be subsequently proposed by the Special Deputy Receiver). A single fixed share shall be paid to each member who holds an Eligible Policy, irrespective of the number of Eligible Policies held by such member.

6. The Special Deputy Receiver, assisted by the actuarial firm employed by him, is authorized to prepare an allocation of the estate's funds for distribution to members based upon the methodology and principles which have been approved in this Order. The Court retains jurisdiction to consider any application by the Special Deputy Receiver with respect to the application of these criteria to any specific policy or member.

7. The Special Deputy Receiver is authorized to publish a notice of the January 31, 2001 Bar Date in substantially the form attached to this Order's Appendix A.

8. The Special Deputy Receiver is authorized to use the form of proof of claim and instructions substantially in the form attached hereto as Appendix B.

9. All other objections that were or could have been made are overruled.

10. In order to facilitate the orderly administration of this estate, this order is designated as final for purposes of appeal.

11. So ordered this _____ day of _____, 2000.

Judge Thomas J. Brown III